

WELLA 204 US (10207602)REMARKSObjection to the Specification

The Examiner has objected to the amendment filed on February 10, 2009 under 35 U.S.C. § 132(a) as introducing new matter, specifically, the phrase "an on demand remote inventory management of said vending device." Although applicant believes that the specification as originally filed includes adequate support for the phrase objected to by the Examiner, in order to expedite the prosecution of this case, applicant has amended the pending claims to delete the phrase. Accordingly, applicant respectfully requests that this objection be withdrawn.

Status of the Claims

Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46, and 48-51 are currently pending and amended herein.

Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46, and 48-51 stand rejected.

In light of the remarks to follow, reconsideration and allowance of this application are requested.

112 Rejection

Claims 1, 8, 12, 19, 27, 34, 27, and 45 are rejected under 35 U.S.C. § 112, ¶ 1, as unenabled. Specifically, the Examiner contends that the specification does not enable "providing on demand remote inventory management of said vending device." Although applicant believes that the specification as originally filed "describes the invention in such terms that one skilled in the art can make and use the claimed invention" without undue experimentation, in order to expedite the prosecution of this application, applicant has amended the pending claims to delete the phrase "providing on demand remote inventory management of said vending device. Accordingly, applicant requests that this rejection be withdrawn.

WELLA 204 US (10207602)103 Rejection

Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46, and 48-51 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,163,010 to Klein et al. (hereafter "Klein") in further view of U.S. Patent No. 4,767,917 (hereafter "Ushikubo") and in further view of U.S. Patent No. 7,099,740 to Bartholomew et al. (hereafter "Bartholomew"). Applicant respectfully traverses these rejections.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not be based on the Applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143. Here, the Examiner has failed to establish a *prima facie* case of obviousness because the combination of Klein, Ushikubo, and Bartholomew does not teach or suggest all the claim limitations of independent claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46, and 48-51.

As previously explained, only the claimed invention teaches or suggests a method and system for remotely managing inventories of a plurality of vending devices over a communications network, thereby eliminating the responsibility and cost associated with maintaining and managing inventory of hair care/cosmetic products. Contrary to the Examiner's assertions, none of the asserted references alone or in combination teach this limitation of all the pending claims.

Specifically, Klein at best is directed to a singular machine that prepares cosmetic products and is in no way concerned with remotely managing the inventories of a

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plurality of cosmetic vending devices in any number of disparate locations, as required in the pending claims. Even the portion cited by the Examiner in the Final Office Action at pages 2 and 6, states that Klein is directed to "a device for formulating a cosmetic product ... at the point of sale," meaning a singular device at a specific location. Accordingly, contrary to the Examiner's assertion, Klein does not teach or suggest a system and method for remotely managing inventories of a plurality of vending devices over a communications network.

Ushikubo solely is directed to an automatic vending machine where pre-registered key cards are used for effecting purchases and where all components of the system are located in the same store. *See, e.g.*, Ushikubo, col. 2, lns. 45-46; col. 6, ln. 52 – col. 7, ln. 11. Ushikubo is in no way concerned with remotely managing the inventories of a plurality of cosmetic vending devices in any number of disparate locations as required in the pending claims. In fact, the portion of Ushikubo cited by the Examiner in the Final Office Action at pages 2 and 6 is simply not concerned with remotely managing inventory of a plurality of vending devices. The cited portion of Ushikubo merely indicates that for every specific transaction, the vending device prints out a list of the goods which have been sold for that particular transaction, and that the list is also kept within the vending device to be print out at a later time for the purpose of being "used for charging the account of the card holder." *See*, Ushikubo, col. 5, lns. 22 – 51 (emphasis added). Nowhere does Ushikubo indicate that the list is kept for purposes of inventory or that the list is retained for any period of time beyond a particular transaction to make it viable for any other purpose than the particular transaction to which it relates. Accordingly, contrary to the Examiner's assertion, Klein and Ushikubo alone or in combination do not teach or suggest a system and method for remotely managing inventories of a plurality of vending devices over a communications network.

Bartholomew is merely directed to a nail polish dispenser that allows for nail polish formulations to be created according to a customer's specifications at the point-of-

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sale ("POS"). *See, e.g.*, Bartholomew, col. 3, 32-39. Bartholomew does not teach or suggest remotely managing inventories of a plurality of vending devices over a communications network and scheduling delivery to those vending devices with low inventories based on the updated inventory maintained at the central computer for all the vending devices. In fact, column 6, lines 44-67 to column 7, lines 1-2 in Bartholomew, cited by the Examiner, do not disclose compiling data for the purpose of managing the inventory of various vending devices when an actual purchase is made on a specific vending device and also scheduling a delivery of the required product to a specific vending device identified by the claimed invention. To the contrary, Bartholomew merely describes compiling data "for evaluating demographic correlations, as to consumer color preference data ..." for purposes of studying overall demographic preferences. It is appreciated that one of ordinary skill in the art would not confuse Bartholomew's demographic study based on user preference with the claimed invention's on demand remote inventory management based on actual sales and transactions.

Moreover, Bartholomew is concerned with a system residing in the vending machine itself for monitoring its own inventory levels. Contrary to the Examiner's assertion, Bartholomew does not teach or suggest remotely managing the inventories of a plurality of vending devices from a central computer over a communications network and automatically scheduling a delivery to a particular vending device if the inventory of that particular vending device is low, as required in the pending claims. That is, Bartholomew does not teach or suggest managing inventories of a plurality of vending devices remotely from a central computer and in fact, does nothing itself to actually manage the restocking of any depleted fluids. Even col. 11, lines 20-43, cited by the Examiner, shows that the apparatus must either "notify the operator" or "notify a remote subscriber" of a reduction in product. The claimed invention, on the other hand, removes the need for any operator or remote subscriber involvement, by remotely managing inventories of a plurality of vending devices that might be in a number of disparate

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locations from the central location. Accordingly, contrary to the Examiner's assertion, Klein, Ushikubo and Bartholomew alone or in combination do not teach or suggest a system and method for remotely managing inventories of a plurality of vending devices over a communications network. Therefore, the Examiner has failed to establish a *prima facie* case of obviousness because the combination of Klein, Ushikubo and Bartholomew fails to teach or suggest all of the limitations of the pending claims.

"To imbue one of ordinary skill in the art with knowledge of the present invention, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim of the insidious effect of hindsight syndrome, wherein that which only the inventor taught is used against the teacher." W.L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1553 (Fed. Cir. 1983). The prior must to be judged based on a full and fair consideration of what that art teaches, not by using Applicant's invention as a blueprint for gathering various bits and modifying the pieces in an attempt to reconstruct Applicant's invention. The Examiner cannot simply change the principle of the operation of the reference or render the reference inoperable for its intended purpose to render the claims unpatentable. Nowhere do any of the cited references teach or suggest remotely managing inventories of a plurality of vending devices over a communications network from a central computer and scheduling delivery of the products to a specific vending device identified as having low inventory, as required in pending claims. Accordingly, it is submitted that the Examiner has succumbed to the lure of prohibited hindsight reconstruction.

Moreover, the claimed invention solves a problem that was simply not at issue in any of the cited references, namely how to remotely manage the product inventory of a plurality of vending devices in many locations over a communications network and schedule delivery only to those vending devices having low inventories. It is undeniable that none of the cited references individually or in combination therewith are remotely concerned with the problem of remotely managing inventories a plurality of vending

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devices and scheduling delivery of the products to those vending devices with low inventories identified based on the inventory data maintained at a central computer. Since applicant has recognized a problem not addressed by the cited prior art and solved that problem in a manner not suggested by the cited prior art, the basis for patentability of the claims is established. See *In re Wright*, 6 U.S.P.Q. 2d, 1959, 1961-1962 (Fed. Cir. 1988). There, the CAFC relied upon previous decisions requiring a consideration of the problem facing the inventor in reversing the Examiner's rejection. "The problem solved by the invention is always relevant". *Id.* at 1962. See also, *In re Rinehart*, 189 U.S.P.Q. 143, 149 (CCPA 1967), which stated that the particular problem facing the inventor must be considered in determining obviousness.

Even if one of ordinary skill in the art combines Klein and Ushikubo with Bartholomew, as suggested by the Examiner, there is no reasonable expectation of success because the resulting combination will not result in the claimed invention. None of the cited references teach or suggest remotely managing the inventories of a plurality of vending devices over a communications network and scheduling delivery of products to the vending device based on the updated inventory maintained at a central computer for each vending device. Therefore, the Examiner has again failed to establish a *prima facie* case of obviousness because there is no reasonable expectation of success in combining Klein and Ushikubo with Bartholomew because the resulting combination will not result in the present invention.

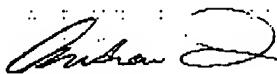
In view of the above, Applicant believes that the pending application is in condition for allowance and requests that the Examiner's rejections be reconsidered and withdrawn.

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Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. NY-WELLA-204-US (10207602) from which the undersigned is authorized to draw.

Dated: July 1, 2009

Respectfully submitted,



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